

### **REMARKS**

Claims 1, 2 and 7-29 are pending in the above-identified application. Claims 1, 2, 7-16 and 18-29 were rejected. Claims 3-6 and 17-19 have been cancelled. With this amendment, claims 1 and 16 were amended, to recite “wherein cobalt (Co) is contained in not more than one of the manganese contained complex oxide and the nickel contained complex oxide.” This language is supported by the specification in examples 1-1, 1-10, 1-11, 1-12 and 1-13 and illustrated in Table 2 on Page 24. Applicants maintain that no new matter has been added. Accordingly, claims 1, 2 and 7-29 are at issue in the above-identified application.

Applicants would first like to thank Examiner Jonathan Crepeau for his helpful and courteous discussion held with Applicants' representative on January 8, 2004. During the interview Applicants discussed the outstanding rejections.

### **Objection To Claims**

Claim 19 was objected to under 37 C.F.R. § 1.75 as being a substantial duplicate of claim 18. In response, Applicants have cancelled claims 18 and 19 and incorporated the limitations found in claim 18 into claim 16.

### **35 U.S.C. § 112 Indefiniteness Rejection of Claims**

Claims 1, 2, 7-16 and 18-29 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Examiner claims that the claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors at the time the application was filed had possession of the claimed invention. The Examiner stated that claims 1 and 16 had been amended to recite the limitation “and without cobalt” in reference to manganese compound in claim 1 and the nickel compound in claim 16. As a result, Applicants have removed this

limitation from the claims and therefore, in light of this, Applicants now submit that the claims do comply with the written description requirement.

**35 U.S.C. § 103 Obviousness Rejection of Claims**

Claims 1, 2, 8-12, 14, and 28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over WO 99/59214 in view of *Takeuchi et al.* (U.S. Patent No. 6,030,726). Claim 1 recites a non-aqueous electrolyte secondary battery comprising a positive electrode, a negative electrode and a non-aqueous electrolyte, wherein the positive electrode contains a manganese contained complex oxide and a nickel contained complex oxide and wherein cobalt is contained in not more than one of the manganese contained complex oxide and the nickel contained complex oxide. Claim 16, from which claims 20-29 depend, recites a material for a positive electrode containing a manganese contained complex oxide, a nickel contained complex oxide, and wherein cobalt is contained in not more than one of the manganese contained complex oxide and the nickel contained complex oxide. While the WO 99/59214 reference discloses a positive electrode that contains a complex oxide of manganese lithium and cobalt and a complex oxide of nickel lithium and cobalt, the WO 99/59214 reference does not disclose a compound wherein cobalt is contained in not more than one of a manganese contained complex oxide and a nickel contained complex oxide. Additionally, while *Takeuchi et al.* describes a lithium secondary battery, *Takeuchi et al.* does not teach or even suggest a compound wherein cobalt is contained in not more than one of a manganese contained complex oxide and a nickel contained complex oxide.

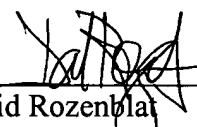
Accordingly, Applicants submit that the claimed invention is not either anticipated by nor obvious over the applied references, either alone or in combination. Withdrawal of these grounds of rejection is respectfully requested.

**CONCLUSION**

In view of the remarks set forth above, Applicants respectfully submit that the present invention is in condition for allowance. Early notification to such effect is earnestly solicited. Should the Examiner have any remaining issue, Applicants kindly request the Examiner contact the undersigned.

Respectfully submitted,

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By:   
David Rozenblat  
Registration No. 47,044  
SONNENSCHN EIN NATH & ROSENTHAL LLP  
P.O. Box 061080  
Wacker Drive Station, Sears Tower  
Chicago, Illinois 60606-1080  
(312) 876-8000

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